

# Exhibit B

## Part 2

## FRITZ - CROSS EXAMINATION / CURRAN

1 (Trial Exhibit 8140 received in evidence)

2 (Document displayed)

3 **BY MR. CURRAN:**

4 **Q** All right, Ms. Fritz, I want to begin -- we will go  
5 through these emails in the time that they actually were  
6 written and sent, so we'll start with the last -- the  
7 first-in-time email, which is the last email that you have.

8 And this starts at the very bottom of the first page where  
9 you can see it's from David Kielly, on June 20th, 2005. And  
10 then the bulk of the email is on the next page.

11 Do you see that, ma'am?

12 **A** I do.

13 (Document displayed)

14 **Q** Now, Ms. Fritz, the subject line here is "Thanksgiving Day  
15 Front and Back Cover Items," do you see that?

16 **A** I do.

17 **Q** And that is talking about the Thanksgiving Day circular  
18 promoting Black Friday items, correct?

19 **A** I believe so, yes.

20 **Q** Okay. And, even though this email is from June, 2005,  
21 several months before Thanksgiving, the folks at Best Buy are  
22 already thinking about Black Friday. Right?

23 **A** Absolutely.

24 **Q** Okay. And here, Mr. Kielly writes in this email

25 (As read):

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1 "Everyone, as a reminder, submissions for the front cover time  
2 specials and back cover items for the Thanksgiving Day insert  
3 are due by Friday of this week."

4 I'll continue in a minute. But, I think you testified  
5 this morning about inserts. Those are what goes in the  
6 newspaper on Thanksgiving Day, in this case?

7 A The insert is what goes in the newspaper every week.

8 Q So, for instance, some of the color ads that you  
9 identified for Mr. Silberfeld this morning are insert items,  
10 right?

11 A Right. All of our advertisements are considered inserts.

12 Q Okay. And then continuing with this email (As read):

13 "In prior years some business team members have been reluctant  
14 to share details re their offers for fear of this information  
15 leaking out and becoming public. In order for my team to give  
16 you visibility to the forecasted units, revenue and margin, we  
17 will need to have accurate information."

18 Let me stop there for a second. Ma'am, was it a problem  
19 having information leak out and become public from within  
20 Best Buy?

21 A There was always a concern that the offers would get out,  
22 and therefore, get into the hands of someone else. So we were  
23 very careful in how we managed our insert in general, and the  
24 pricing, and similarly, with our dot-com website.

25 Q So, the concern was that people working for Best Buy would

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1 leak out Best Buy's own information?

2 A Or someone else would get their hands on it. We were just  
3 very concerned in general to keep it to a small group.

4 Q So this was highly-sensitive competitive information?

5 A Highly-sensitive promotional information.

6 Q Okay. Good -- that is a good correction. So,  
7 highly-sensitive promotional information, so it would have been  
8 competitive intelligence for your competitors, but for you, it  
9 was just highly-sensitive promotional material.

10 A Yes.

11 Q Okay. And then continuing (As read):

12 "To help facilitate keeping the information confidential,  
13 Stephanie has set up a restricted file for the PPs..."

14 And, can you help us? What does "PPs" mean here,  
15 Ms. Fritz?

16 A I believe it stands for "promotional planner."

17 Q Okay.

18 A Which was someone that someone that would actually help  
19 submit the details for the ads.

20 Q Okay.

21 "...for the PPs to enter their team's information. The only  
22 people with access to that file will be the PPs, Stephanie,  
23 Elva Krebsbach (on my team) and me. Please reinforce the need  
24 for your teams to give us the most accurate and complete  
25 information they can by Friday of this week. Next week, we



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1 will send you a first look at the items and forecasted  
2 information. Call if you have questions."

3 So, Ms. Fritz, this indicates, does it not, that steps  
4 were being taken to create a restricted file to help secure  
5 the confidentiality of this information?

6 A Yes. Appears that way.

7 Q And then, the next email in time is from you to some of  
8 your colleagues. Right?

9 A Yes.

10 Q Okay. And you write simply:

11 "Do you have your plans set? I'd like to review when you get  
12 a chance."

13 Right?

14 A Yes.

15 Q And then Stephanie, as I'll call her, responds to you.  
16 Correct?

17 A Yes.

18 Q And copies some colleagues as well. Correct?

19 A Yes.

20 (Document displayed)

21 Q Okay. And then, she writes some information about  
22 notebooks and desktops. But then I want to focus on this  
23 section about "Other points of consideration."

24 And, ma'am, do you see the first bullet point under there  
25 (As read):

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1 "We have intelligence that Wal-Mart will be at 399 or less  
2 instant on 256/40 15-inch combo branded notebook with a  
3 forecast of just under 100,000 units."

4 Do you see that, Ms. Fritz?

5 A I do.

6 Q So that's competitive intelligence about Wal-Mart, right?

7 A It looks that way, yes.

8 Q And, it's specifically competitive intelligence about what  
9 Wal-Mart's promotional activity will be in its insert several  
10 months later for Thanksgiving and Black Friday. Right?

11 A It appears that way, yes.

12 Q And this is being reported to you by your subordinate,  
13 Stephanie. Right?

14 A Yes.

15 Q Okay. And then the next item:

16 "We have separate intelligence that suggests that some  
17 retailers will opt for best price for a configuration versus  
18 lowest price optic."

19 Do you see that, Ms. Fritz?

20 A I do.

21 Q Can you explain for us what that -- the second part of  
22 that sentence means, where -- "...for a configuration versus  
23 lowest price optic"?

24 A Yeah, I don't recall this specific instance, but what  
25 we've typically meant in the past regarding best prices for

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1 configuration versus optic would be a low price based on a  
2 certain feature set in a product, versus just the lowest  
3 opening price point, which would mean the lowest price optic.

4 Q Okay. So, those are alternative promotional approaches?  
5 Is that right?

6 A Yeah, promotional approaches, but also kind of a strategy  
7 approach as well.

8 Q Okay. And, according to your subordinate Stephanie, folks  
9 at Best Buy had separate intelligence suggesting that some  
10 competitors would opt for best price for a configuration as  
11 opposed to lowest price optic, right?

12 A It appears that way.

13 Q And then the third bullet point (As read):

14 "Ultimately, with the amount of units forecasted at Wal-Mart  
15 and their intent to enter the space long-term, we feel it  
16 necessary to win not tie, thus the possibility to go to 359."

17 Do you see that?

18 A I do.

19 Q And, what do you understand Stephanie to be reporting to  
20 you with that item?

21 A I would understand it to be that in order for us to be the  
22 most competitive in the market, we would have to go to 359.

23 Q Okay. So, correct me if I'm wrong, but what Stephanie is  
24 proposing here is using the competitive intelligence with  
25 respect to Wal-Mart and other retailers, to advantage Best Buy



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1 by helping it become more competitive.

2 A I can't say if that was her intent.

3 Q Was that your understanding?

4 A My understanding is that they were looking at competitive  
5 information while making final promotional decisions for Black  
6 Friday.

7 Q Okay. So, this, this -- this indicates to you the use of  
8 competitive intelligence for Wal-Mart's own pricing  
9 decision-making. Right?

10 A Can you repeat that?

11 Q Yes. This email from Stephanie to you (Indicating)  
12 indicates the use of competitive intelligence as to Wal-Mart  
13 and other retailers, for the use by Best Buy in determining  
14 what price it should charge consumers.

15 A It appears that way.

16 Q Ms. Fritz, do you know what the sources were of the  
17 competitive intelligence being reported by Stephanie to you  
18 here?

19 A I do not.

20 Q Do you recall if you asked her?

21 A I don't recall.

22 Q Do you recall if that competitive intelligence turned out  
23 to be accurate?

24 A No. I don't recall.

25 Q Was it unusual for you to have competitive intelligence of



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1 this type months ahead of your competitors' actual action?

2 **A** Not unusual in Black Friday planning, no.

3 **Q** So, it does not strike you as unusual that Stephanie in  
4 June was reporting on what Wal-Mart might do in November.

5 **A** No. We were all doing our planning well in advance.

6 **Q** All right.

7 **MR. CURRAN:** Your Honor, I have another document to  
8 hand out.

9 **JUROR:** Excuse me, Your Honor; may I be excused for a  
10 moment?

11 **THE COURT:** We'll take a five-minute break. Don't  
12 speak to each other or anyone else about this case.

13 (Jury excused)

14 **THE COURT:** All right. We will just break for five  
15 minutes.

16 You can step down.

17 (Recess taken from 1:40 to 1:47 p.m.)

18 **THE CLERK:** Come to order.

19 (The following proceedings were held in the presence of  
20 the Jury)

21 **THE COURT:** Welcome back, ladies and gentlemen. You  
22 may all be seated.

23 All right, you may proceed, Mr. Curran.

24 And you are still under oath, ma'am.

25 **MR. CURRAN:** Your Honor, I was handing out Exhibit

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1 8202. I think I have given copies to counsel already.

2 (Document handed up to the Court)

3 **MR. CURRAN:** May I approach the witness, Your Honor?

4 **THE COURT:** You may.

5 (Witness examines document)

6 **BY MR. CURRAN:**

7 **Q** All right, Ms. Fritz, please take a moment to take a look  
8 at 8202. And then I'll ask you some questions about it.

9 (Witness examines document)

10 **MR. CURRAN:** And Your Honor, I understand  
11 Mr. Silberfeld stipulates to the admission of 8202.

12 **MR. SILBERFELD:** Without further foundation, yes,  
13 Your Honor.

14 **THE COURT:** All right, thank you. It will be  
15 received.

16 (Trial Exhibit 8202 received in evidence)

17 (Document displayed)

18 **MR. CURRAN:** Mr. Freitas as well, I think?

19 **MR. FREITAS:** Yes, Your Honor.

20 **MR. CURRAN:** Okay.

21 **BY MR. CURRAN:**

22 **Q** Okay, Ms. Fritz, still in 2005 but now closer to  
23 Thanksgiving, right?

24 **A** Correct.

25 **Q** And at the bottom email of the three here is, again,

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1 Stephanie to you, relating to the Thanksgiving Day insert.

2 Right?

3 A It appears that way, yes.

4 Q And, in the first sentence she refers to a large  
5 cross-functional group meeting earlier that day to discuss  
6 competitive intelligence. Right? Or competitive information.

7 A That's what's here, yes.

8 Q And then in the -- kind of the block paragraph there,  
9 "What we know....." she's reporting on competitive  
10 information that Best Buy folks have gathered up. Right?

11 (Witness examines document)

12 A Yeah, it looks that way, as well as some of our value  
13 equation analysis.

14 Q Okay. So, looking at the competitive information there,  
15 the first line is a Best Buy product being considered for Black  
16 Friday. Right?

17 A It appears that way, yes.

18 Q Okay. So that's not competitive information; that's your  
19 own information. Right?

20 A I believe so. I don't recall this specific instance, but  
21 that's what's stated here, yes.

22 Q Okay. And there, Stephanie is setting forth the  
23 characteristics of this particular product. Right?

24 A Yes.

25 Q And this, this happens to be a Toshiba product. Right?



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1 A Yes, it looks that way.

2 Q And first, it describes the certain features of the  
3 product -- and is this a laptop, Ms. Fritz?

4 A I believe so, yes.

5 Q And it talks about the price, with the instant rebate,  
6 right?

7 A Yes.

8 Q And then, the 10,000-unit forecast. Right?

9 A Yes.

10 Q And that's Best Buy's forecast of how many they'll sell.  
11 Right?

12 A Correct.

13 Q Okay. And then the next line, "WM" means Wal-Mart, right?

14 A Uh, I would assume so, but -- I don't know for sure.

15 Q So this is competitive intelligence that Stephanie is  
16 reporting to you. Right?

17 A This appears to be information on Wal-Mart as well as a  
18 few other competitors.

19 Q Okay. And specifically, information about what they're  
20 going to be doing on Thanksgiving ahead of Black Friday.  
21 Right?

22 A It looks like information that she's saying here's what  
23 she's heard. So, and it does say "for T-day," yes.

24 Q She's saying "Here's what we know," right?

25 A Yes.

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1 Q Okay. And, as to the Wal-Mart product, it describes the  
2 features, the price, and the unit forecast. Correct?

3 A Yes, it looks that way.

4 Q And the unit forecast is the forecast of how many units  
5 Wal-Mart thinks it will sell. Right?

6 A I couldn't say that for sure, but that's what's here.

7 Q And then the one below that, COMP, that means Comp USA,  
8 right?

9 A I would imagine, yes.

10 Q And that's another competitor of yours at the time, right?

11 A Yes.

12 Q And there again, the features of their Black Friday  
13 special, and no forecast information on that one. Right?

14 A I don't see any.

15 Q Okay. And then, two below that, we will skip the other  
16 Best Buy one, there is a Circuit City item. Correct?

17 A Yes.

18 Q And it's got the features of the product, the price, and  
19 Circuit City's forecast. Right?

20 A Yes.

21 Q So, this block (Indicating) represents competitive  
22 information, gathered up by Best Buy, and considered by  
23 Best Buy in its -- in its decision-making. Right?

24 A Again, I don't recall the specific instance or time, so  
25 I'm not sure if it was all gathered up by Best Buy, but it does

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1 appear to be information for that time period.

2 Q Okay. And it's pretty specific, isn't it? Especially the  
3 inclusion of the forecasts for units to be sold. Right?

4 A It is pretty specific, yes.

5 Q Okay. And, ma'am, the "V/E," I think you have referred,  
6 that stands for "value equation," right?

7 A Correct.

8 Q And that's -- that part of the lines is a Best Buy  
9 analysis. Right?

10 A Yes.

11 Q So, other retailers, to your knowledge, don't use the  
12 value equation, right?

13 A Not to my knowledge, no.

14 Q That was invented at Best Buy, right?

15 A Yes.

16 Q As a way to value specific computing products?

17 A As a way to assign a consumer value to a set of components  
18 in a given product.

19 Q Okay. And I think you testified this morning that the  
20 value equation is used at Best Buy to value a specific product,  
21 both for purposes of how much Best Buy should pay for it, and  
22 how much it should sell it for to consumers. Right?

23 A No, not actually, not from my recollection. It's more for  
24 how much we're going sell of the product, and then how much we  
25 should sell it for. Not how much we should pay for it.



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1 Q So, the information from the competitors here, Ms. Fritz,  
2 from Wal-Mart, from Comp USA and from Circuit City, that is  
3 non-public confidential information, isn't it?

4 A I don't know the answer to that. I'm not sure where it  
5 came from.

6 Q Okay. But we saw before that certainly, Best Buy  
7 considered its Black Friday plans to be confidential,  
8 non-public information. Right?

9 A Yes.

10 Q And took some rather elaborate steps to protect that  
11 information. Right?

12 A Which is standard, yes.

13 Q Okay. So, you would think that your competitors  
14 considered their information non-public, confidential  
15 information as well, wouldn't you?

16 MR. SILBERFELD: Objection; speculative.

17 THE COURT: Sustained.

18 BY MR. CURRAN:

19 Q Now, Ms. Fritz, you respond to Stephanie here, correct?

20 A I do.

21 Q And, among other things, you correct the Wal-Mart price.  
22 Correct?

23 A Yes. It looks like I -- I do correct it.

24 Q Okay. How did you know what Wal-Mart's price would be for  
25 Black Friday?

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1     **A**     I don't recall this specific instance. So, I can't -- I  
2     can't -- I couldn't say.

3     **Q**     Okay.

4             **MR. CURRAN:** Your Honor, one more document in this  
5     set. And I've shown it to Mr. Silberfeld, who has stipulated  
6     to its admission.

7             **MR. SILBERFELD:** Yes, Your Honor. 8197.

8             **THE COURT:** It will -- any objection, from anybody  
9     else?

10            **MR. FREITAS:** No objection, Your Honor.

11            **THE COURT:** It will be received. Thank you.

12            (Trial Exhibit 8197 received in evidence)

13            (Document displayed)

14            **MR. CURRAN:** May I approach the witness, Your Honor?

15            **THE COURT:** You may.

16            (Document handed up to the Court)

17            (Witness examines document)

18     **BY MR. CURRAN:**

19     **Q**     All right, Ms. Fritz, do you have Exhibit 8197 in front of  
20     you?

21     **A**     I do.

22     **Q**     Are you ready for some questions on it?

23     **A**     I need to review it for a moment.

24     **Q**     Sure.

25            (Witness examines document)

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1 A Okay.

2 Q Okay. So, let's start at the bottom of 8197, please.

3 (Document displayed)

4 Q And, so, what you are doing here, Ms. Fritz, is you are --  
5 you have made some changes in Stephanie's email, and then you  
6 are forwarding it to some of your bosses. Correct?

7 (Witness examines document)

8 A I can't say that I've made changes to the email, but it  
9 does look like I'm forwarding her email with some additional  
10 comments.

11 Q Okay. The Wal-Mart price is corrected to 398, correct?

12 A Oh, yeah. It is corrected on here.

13 Q Okay. And then you are forwarding this to David Morrish,  
14 who I think you already said was your boss at the time, right?

15

16 A He was my boss at the time, yes.

17 Q And then Jeff Peterson, who was he?

18 A Jeff Peterson was our -- probably our VP of operations,  
19 retail operations, at the time.

20 Q Okay. So you were forwarding the competitive intelligence  
21 to them. Right?

22 A It appears that way, yes.

23 Q And let's look at your message, okay, to them (As read):

24 "Here's the data that we have at this point on T-day for  
25 notebooks. No other large concerns with other categories at



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1 this time but Circuit's ad is still not out there."

2 Do you see that, Ms. Fritz?

3 A I do.

4 Q So there, you were forwarding on the data that you had at  
5 this point, but Circuit City's ad had not been disseminated at  
6 all yet. Right?

7 A It appears that it was not, yet, yes.

8 Q So, wherever you got the Circuit City information, it  
9 wasn't from a Circuit City ad, right?

10 A Yeah, I don't recall where the information came from.

11 Q Okay. And then, continuing:

12 "Let us know if you have questions."

13 The next paragraph:

14 "On the Toshiba SKU..."

15 Or "sku" -- and by the -- that's, I think you said before,  
16 a stock-keeping unit or store-keeping unit, right?

17 A Yes.

18 Q Okay.

19 "...we still feel like we are well positioned as we have  
20 15-inch Bright View and DVD/RW. It doesn't negate the point  
21 that Toshiba who is supposed to be one of our best partners  
22 opted to give Circuit two low-priced aggressive SKUs with  
23 little differentiation in what we are offering and that HP  
24 partnered with Wal-Mart at the expense of further dragging  
25 down the Pavilion brand. We are following up on both of these

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1 topics with the vendors."

2 Okay. First of all, you wrote that, Ms. Fritz, right?

3 A It appears it's an email from me, yes.

4 Q So, so, you were upset with Toshiba and HP for providing  
5 particular products at particular prices to competitors of  
6 yours, right?

7 A I don't know if I would say "upset." Again, I don't  
8 recall the specific instance, but it does appear I was stating  
9 what the challenges were.

10 Q Okay. And, this indicates that you were -- you were at  
11 the time following up with both Toshiba and HP on this topic.  
12 Correct?

13 A It does indicate that, yes.

14 Q Okay. And then, in the top part of this email, Ms. Fritz,  
15 there's some further forwarding of the email to others.  
16 Correct?

17 A Yes, it looks that way.

18 Q Including to Mr. Ron "Bore"?

19 A "Boyer."

20 Q "Boyer."

21 A Boire.

22 Q And Michael Vitelli.

23 A Correct.

24 Q And then, Michael Vitelli forwards it on to someone else,  
25 and writes (As read):

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1 "Toshiba starting to change their posture with BM too!"

2 Is that what it says?

3 A It does.

4 Q And "BM" means BrandsMart, correct?

5 A I -- I couldn't say if that meant BrandsMart or not.

6 Q What does it mean? Do you know?

7 A I don't know.

8 Q Okay. Ms. Fritz, it's not unusual in internal emails like  
9 this to use abbreviations for other companies, right?

10 A Right.

11 Q Okay. So, for instance, at the bottom of this exhibit, in  
12 that competitive intelligence block we have talked about, "WM,"  
13 referring to Wal-Mart, that's not an unusual way to refer to  
14 Wal-Mart, is it?

15 A No.

16 Q Okay. And referring to Comp USA as "Comp," that's not  
17 unusual, right?

18 A Correct.

19 Q And "CC" for Circuit City, that's not unusual, right?

20 A Correct.

21 Q Just shorthand for the company names?

22 A Sometimes, yes.

23 Q All right. So one final question on this document.

24 So, the Wal-Mart price of 398, for the 56/40 combo (sic),  
25 do you see that?



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1     **A**     I do.

2     **Q**     Okay. Now, I would like you to look back at Exhibit 8140,  
3     which you have there, from a few moments ago. This was the  
4     June, '05 email.

5             (Document displayed)

6     **A**     Yes.

7     **Q**     And, that's when Stephanie reported in June having  
8     intelligence that Wal-Mart's price would be 399 or less instant  
9     on 256/40, 15-inch. Right?

10            (Witness examines document)

11    **Q**     Combo.

12    **A**     Yes, although this doesn't say "15-inch," but otherwise  
13    it's similar, yes.

14    **Q**     Okay. So, it looks like Stephanie's competitive  
15    intelligence back in June was pretty accurate. Right?

16    **A**     Actually, the units are very different. So, I -- I would  
17    say it wasn't very consistent.

18    **Q**     Okay. So, so, by "units," you're referring to Wal-Mart's  
19    forecast.

20    **A**     That are listed on these two sheets are very different.

21    **Q**     Right. So, in June, Stephanie was reporting they forecast  
22    of 100,000 units but then in November, she was reporting 60,000  
23    units.

24             (Document displayed)

25    **A**     Yes, it appears that way.

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1 Q Okay. Do you know, did Wal-Mart change their forecast as  
2 to that product?

3 A I don't recall.

4 Q All right. Ms. Fritz, so we have just seen the use of  
5 some competitive intelligence at Best Buy. Right?

6 A Yes.

7 Q So, the effort to gather and assemble competitive  
8 information, including on price and quantity, and the use of  
9 that information within Best Buy, for its own decision-making.  
10 Right?

11 A Can you repeat that?

12 Q Yeah. So, so, through the last three exhibits, we've seen  
13 the gathering of competitive information within Best Buy, the  
14 analysis of it, including competitors' pricing and quantity  
15 information, and the determination by Best Buy as to what its  
16 strategy should be.

17 A Yes. It was common practice for us to gather competitive  
18 information.

19 Q And to use it in your decision-making.

20 A And use it as an input -- one input into our  
21 decision-making.

22 Q Was that activity, in your judgment, consistent with  
23 Best Buy's code of business ethics?

24 A Yes.

25 Q Why?

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1     **A**     Because, again, we needed to make sure that we were  
2     understanding what was going on in the competitive market, but  
3     we were soliciting information or getting information that was  
4     available to others as well.

5             So, it was information that we were utilizing to -- as one  
6     input, into making sure that we were going to have the best  
7     price for our customers.

8     **Q**     Okay. But, now, you didn't know whether this competitive  
9     intelligence was known to others outside of Best Buy, did you?

10    **A**     No. We did not.

11    **Q**     But in any event, you were comfortable at the time and are  
12    comfortable now with the use of that kind of gathered-up  
13    competitive information?

14    **A**     I am, yes.

15    **Q**     Now, Ms. Fritz, you testified this morning a little bit  
16    about Best Buy's price-matching policy. Right?

17    **A**     I did, yes.

18    **Q**     And, I think you acknowledged to Mr. Silberfeld that it  
19    was appropriate in certain circumstances for Best Buy's store  
20    managers to -- or store employees -- to call their counterparts  
21    at a competitor store to verify pricing or availability of  
22    product. Right?

23    **A**     It was acceptable. It wasn't common practice. It was one  
24    of the ways that we would validate a price. Yes.

25    **Q**     Okay. So, so, correct me if I'm wrong, is this the



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1 dynamic that happens?

2 A customer comes into a Best Buy store, and says, "I have  
3 an ad that shows a lower price on a product that's on your  
4 shelves here at Best Buy, and I'd like Best Buy to match or  
5 beat that price."

6 Is that how the dynamic starts?

7 A There's a lot of different scenarios, but that's one of  
8 them, yes.

9 Q Okay. And under what circumstances would it be  
10 appropriate under Best Buy policy for the Best Buy employee or  
11 store manager or cash register person or whatever to call the  
12 competitor store?

13 A The only time that would need to happen is if we didn't  
14 actually have the ad, couldn't access it online, and it was  
15 really just -- if it was the customer saying it without us  
16 understanding it.

17 So the majority of the time, customers would come in with  
18 the ad in hand, or today they come in with their smartphone in  
19 hand, and that's all we need to match the price.

20 Q Okay. But, so under Best Buy policy, it was on occasion  
21 appropriate for a store manager to have a direct communication  
22 with a competitor store about the price that the competitor  
23 store was selling a product at.

24 A I would say it wasn't always a manager, but again, it was  
25 appropriate on a case-by-case basis to validate that price, not

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1 to have a discussion about it, but to validate it, in the  
2 purposes of being able to honor that for the customer.

3 Q Okay. And by "validate it," you mean to verify or confirm  
4 it?

5 A Yes.

6 Q So it was a way to make sure that the information the  
7 customer was saying was accurate.

8 A It was -- it was validating what the customer was telling  
9 us was actually out there in the market somewhere else, and we  
10 hadn't seen it in ad or online.

11 Q And that was -- that's been long-time established Best Buy  
12 corporate policy, right?

13 A It's been part of the policy. Again, it's been very  
14 rarely utilized, especially today, with online and smartphones.

15 MR. CURRAN: Your Honor, at this time I would like to  
16 use the exhibits that have been stipulated into evidence  
17 earlier today, beginning with 5607. And I have copies of that  
18 to hand around.

19 (Document displayed)

20 MR. CURRAN: May I approach the witness, Your Honor?

21 THE COURT: You may.

22 (Witness examines document)

23 BY MR. CURRAN:

24 Q Ms. Fritz, do you have the document Exhibit 5607 in front  
25 of you?

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1 A I do.

2 Q Okay. And, you're not copied on this document. Correct?

3 A No, I do not appear to be.

4 Q I have some questions to ask you about the text of this  
5 email. Philip Britton wrote this email, correct?

6 A It appears to have come from Phil, yes.

7 Q Okay. And, we've already talked about Mr. Britton. He  
8 was involved in the competitive field unit. Correct?

9 A Correct.

10 Q So, he was one of the Best Buy employees dedicated to  
11 gathering up competitive information. Right?

12 A Correct.

13 Q And I think you referred to Mike Ray earlier in your  
14 testimony today. Correct?

15 A I did.

16 Q I think you told me that at one point, at least, he was  
17 the head of competitive intelligence gathering.

18 A Correct.

19 Q And he's the addressee of this email, correct?

20 A It looks that way, yes.

21 Q Okay. So together, Mr. Britton and Mr. Ray are two of the  
22 Best Buy employees principally responsible for competitive  
23 intelligence. Right?

24 A Yes.

25 Q Okay. And, in this email, Mr. Britton writes to Mr. Ray



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1 as follows (As read):

2 "Here's a glimpse into Circuit's next 90 days."

3 And, Ms. Fritz, in Best Buy parlance, "Circuit" means

4 "Circuit City," right?

5 A I would assume so, yes.

6 Q Okay. Continuing:

7 "It is a Home Theater view. We do have a high degree of  
8 confidence in this information. We do anticipate adding to  
9 this as Friday progresses, but it's a good look of what we  
10 have at the time of this writing. I cannot stress how much  
11 the T3 Field Competitive Specialist Team contributed to this  
12 view. They put in a 12-hour plus day, visited Circuit after  
13 Circuit, and used all of their contacts sentence (and a few  
14 sneaky tricks) to get this information. It was a great group  
15 effort."

16 So, Ms. Fritz, my question for you is: Is this email  
17 (Indicating) consistent with the type of competitive  
18 intelligence emails that you saw during the relevant period in  
19 your employment at Best Buy?

20 A We would get recaps from them. I have not looked through  
21 the document to be able to say it was -- it's consistent or  
22 not. From an email perspective, I would say no.

23 Q No, it's not typical?

24 A No.

25 Q Okay. It's unusual?

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1     **A**     I think it's unusual, in terms of the tone of the email.

2     **Q**     Do you know what's being referred to by "a few sneaky  
3     tricks"?

4     **A**     I do not.

5     **Q**     Do you know what's being referred to by "used all of their  
6     contacts"?

7     **A**     I do not.

8     **Q**     Okay. Were you aware of whether or not Mr. Britton,  
9     Mr. Ray, and others in the competitive field unit had contacts  
10    at competitor stores?

11    **A**     I was not aware.

12    **Q**     In your judgment, would the maintenance of contacts at  
13    competitor stores by Best Buy people be consistent with the  
14    Best Buy code of ethics?

15    **A**     I would say no.

16            **MR. CURRAN:** Next, Your Honor, I would like to hand  
17    out 5603.

18            May I approach the witness, Your Honor?

19            **THE COURT:** You may.

20            (Document handed up to the Court)

21            (Witness examines document)

22            (Document displayed)

23    **BY MR. CURRAN:**

24    **Q**     Ms. Fritz, do you have Exhibit 5603 in front of you?

25    **A**     I do.

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1 Q Ms. Fritz, you are not on this email either, are you?

2 A I don't appear to be.

3 I'm just reading through it.

4 (Witness examines document)

5 A Okay.

6 Q Ms. Fritz, I'm going to focus on a couple of specific  
7 parts of this document.

8 Beginning with on the first page, there's an email from  
9 Mike Green. Do you see that?

10 A I do.

11 (Document displayed)

12 Q Do you know Mike Green, or did you at the time?

13 A I do not.

14 Q But based on his signature block here, he appears to be a  
15 district marketing coordinator in Florida. Correct?

16 A Appears that way.

17 Q And Ms. Fritz, he writes (As read):

18 "I just checked with the Dadeland CC today..."

19 That's a reference to a Circuit City store, correct?

20 A I would assume so.

21 Q Okay (As read):

22 "And they are running with the offer like we are 'til the end  
23 of July even though their signage says expires 7/4."

24 Do you see that, ma'am?

25 A I do.



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1 Q And this email is dated July 7, correct?

2 A Yes.

3 Q So this is talking about Circuit City's pricing in this  
4 Dadeland store through the end of July. Correct?

5 A It actually says their "offer." Doesn't say their  
6 "pricing."

7 Q Okay. Running with their offer, through the end of July?

8 A That's what it says.

9 Q And, what do you understand "offer" to mean in this  
10 context?

11 A I don't recall this specific instance, but "offer" could  
12 be a promotion. It could be a number of things.

13 Q Okay. And then, continuing (As read):

14 "Also while talking to one of the managers he informed me that  
15 their corporate office is telling the regional, district and  
16 store management teams that Best Buy is starting an all out  
17 pricing war to put CC out of business and that they will be  
18 launching pre-emptive strikes in the form of aggressive  
19 financing, promotions and floor pricing and that some stores  
20 have been told to kick out any Best Buy employed shoppers if  
21 they think they are writing or even recording prices. This  
22 came from a manager that has known me for 8 years."

23 Do you see that, ma'am?

24 A I do.

25 Q So Mr. Green, here, is reporting on a discussion he had

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1 with one of the managers at the Dadeland Circuit City.

2 Correct?

3 **A** It appears that way, yes.

4 **Q** In your judgment, is this, the conduct reflected in this  
5 email, consistent with Best Buy's ethics policy, ethics code?

6 **MR. SILBERFELD:** Objection, Your Honor. Vague as to  
7 which conduct.

8 **THE COURT:** Can you specify?

9 **MR. CURRAN:** Yes.

10 **BY MR. CURRAN:**

11 **Q** Ms. Fritz, the second sentence of the email has a  
12 reference to "...while talking to one of the managers he  
13 informed me..." and then it continues on.

14 In your judgment, is it consistent with Best Buy's code of  
15 ethics for Mr. Green to have been talking with one of the  
16 managers at the Dadeland Circuit City about the subjects  
17 reflected in this email?

18 **A** I would say it was not common practice, no.

19 **Q** That -- my question was, was it consistent with Best Buy's  
20 code of ethics?

21 **A** I would say no.

22 **Q** Why not?

23 **A** Because part of our code of ethics is to make sure that  
24 we're looking at information in terms of the competitive  
25 context, and not engaging in conversations.